

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Suzanne B. Conlon	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	00 C 5768	DATE	12/4/2000
CASE TITLE	MARTIN ABRAMS vs. TROOPER KENT WALKER, et al.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

--

## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Defendants' motion to dismiss [6-1] is denied. The defendants are directed to answer the complaint by December 15, 2000. ENTER MEMORANDUM OPINION AND ORDER.

*Suzanne B. Conlon*

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	SB	courtroom deputy's initials	ED-7 FILED FOR DOCKETING 00 DEC -5 AM 11:25	number of notices	Document Number 11
				12/6/00 date docketed	
				C.S. docketing deputy initials	
				12/4/2000 date mailed notice	
				jad	
			Date/time received in central Clerk's Office	mailing deputy initials	

**DOCKETED**  
DEC 06 2000

Plaintiff,

No. 00 C 5768

Suzanne B. Conlon, Judge

**Defendants.**

Martin Abrams (“Abrams”) sues Trooper Kent Walker, #4315 (“Walker”) and Trooper The’ Tran, #4824 (“Tran”) (collectively “defendants”) in their individual capacity for malicious prosecution under 42 U.S.C. § 1983 (“§ 1983”) (Count I) and state law (Count II). Defendants move to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted, pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6). Abrams has failed to respond to the motion.

For purposes of a motion to dismiss, the court accepts all well-pleaded allegations in the complaint as true and draws all reasonable inferences in favor of the plaintiff. *Stachon v. United Consumers Club, Inc.*, 229 F.3d 673, 675 (7<sup>th</sup> Cir. 2000). On October 13, 1998, Abrams, a licensed attorney in Illinois, was driving home on Interstate 90 after appearing in the Boone County Courthouse with his client, Trent Forte (“Forte”). Abrams’ vehicle was behind Forte’s on the highway. Walker, a state trooper, stopped Forte’s vehicle. Abrams stopped his car to offer Forte legal assistance. Abrams believed Forte had not violated any traffic or criminal laws. Abrams identified himself to

Walker as Forte's attorney and explained he wanted to speak with his client. In response, Walker said he was going to issue Abrams a ticket. Shortly after this conversation, Tran, a state trooper, arrived on the scene and spoke with Walker. Walker then handcuffed Abrams and charged him with unlawful use of a weapon. Walker and Tran took Abrams to the police station where the officers allegedly fabricated a false story in a signed police report. The report stated Abrams resisted arrest and obstructed a police officer. Consequently, Abrams was charged with resisting arrest and obstructing a police officer. On February 17, 2000, Abrams was found not guilty of all charges arising from his arrest.

Abrams alleges defendants unlawfully fabricated evidence, causing him to be imprisoned and depriving him of his liberty rights. Abrams further claims his arrest without probable cause was an unconstitutional seizure in violation of the Fourth Amendment.

## **DISCUSSION**

### **I. Motion To Dismiss Standard**

In ruling on a motion to dismiss, the court considers "whether relief is possible under any set of facts that could be established consistent with the allegations." *Pokuta v. Trans World Airlines, Inc.*, 191 F.3d 834, 839 (7<sup>th</sup> Cir. 1999) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). A claim may not be dismissed if there is a set of facts that, if proven, would entitle a plaintiff to relief. *Trans All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F. 3d 1423, 1426 (7<sup>th</sup> Cir. 1996). A motion to dismiss tests the sufficiency of the complaint, not its merits. *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7<sup>th</sup> Cir. 1990). However, a court is not required to accept conclusory allegations as true. *Baxter v. Vigo County Sch. Corp.*, 26 F.3d 728, 730 (7<sup>th</sup> Cir. 1994).

## II. Section 1983 claim

Section 1983 creates a federal cause of action for “the deprivation, under color of [state] law, of a citizen’s rights, privileges, or immunities secured by the Constitution and laws of the United States.” *Livadas v. Bradshaw*, 512 U.S. 107 (1994). Section 1983 “is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred.” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (citations omitted). The first step in addressing a § 1983 claim is to identify the specific constitutional right allegedly violated. *Id.* Abrams alleges his Fourth Amendment rights were violated when he was arrested without probable cause.

A criminal defendant may bring an action for malicious prosecution under § 1983 for a violation of his Fourth Amendment rights when he is prosecuted without reasonable grounds and unlawfully incarcerated before trial. *Cervantes v. Jones*, 188 F.3d 805, 808 (7<sup>th</sup> Cir. 1999). Specifically, a plaintiff must show (1) he has satisfied the state law requirements for a malicious prosecution claim;<sup>1</sup> (2) the malicious prosecution was committed by state actors; and (3) he was deprived of liberty. *Sneed v. Rybicki*, 146 F.3d 478, 480-481 (7<sup>th</sup> Cir. 1998). Defendants argue Abrams did not adequately plead the third requirement because he did not allege any incarceration amounting to a constitutional deprivation of liberty. Abrams, however, specifically alleges he was wrongfully imprisoned and suffered loss of liberty. Cmplt. ¶ 23. Read in a light most favorable to the nonmovant, this allegation is sufficient to meet the third pleading requirement for a malicious prosecution claim under § 1983.

---

<sup>1</sup>A plaintiff must allege the following elements for a malicious prosecution claim under Illinois law: “(1) he was subjected to judicial proceedings; (2) for which there was no probable cause; (3) the defendants instituted or continued the proceedings maliciously; (4) the proceedings were terminated in the plaintiff’s favor; and (5) there was an injury.” *Sneed v. Rybicki*, 146 F.3d 478, 480-481 (7<sup>th</sup> Cir. 1998).

Abrams has brought his malicious prosecution claims against police officers. Malicious prosecution claims against police officers are rarely successful. “This is because the [prosecutor], not the police, prosecutes a criminal action.” *Reed v. City of Chicago*, 77 F.3d 1049, 1053 (7<sup>th</sup> Cir. 1996). To successfully plead malicious prosecution against police officers, a plaintiff cannot simply allege he was arrested without probable cause and tried. The plaintiff must further allege police wrongdoing after the arrest, which influenced the prosecutor’s decision to bring the case to trial. *Id.* Abrams satisfies this requirement because he alleges defendants fabricated a story in a police report, and this story caused him to be prosecuted. Cmplt. ¶ 21.

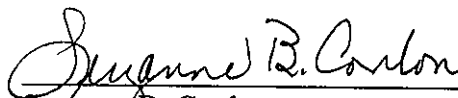
### **III. State law claim**

Abrams also brings his malicious prosecution claim under Illinois tort law. The Illinois Court of Claims typically has exclusive jurisdiction over tort claims against the state. 705 ILCS 505/8 (1996). However, the Court of Claims “does not have exclusive jurisdiction where the plaintiff claims that the state employee acted in violation of statutory or constitutional law, or in excess of his authority.” *Chavez v. Illinois State Police, et al.*, 27 F.Supp.2d 1053, 1082 (N.D. Ill. 1998) (citations omitted). Furthermore, sovereign immunity offers state actors no protection when a plaintiff makes these allegations. *Id.* Abrams has alleged defendants violated constitutional law and acted in excess of their authority by arresting him without probable cause and fabricating evidence. Therefore, the Court of Claims does not have exclusive jurisdiction over Abrams’ state law claim. This court exercises its discretion to accept supplemental jurisdiction over Abrams’ state law claim.

**CONCLUSION**

Defendants' motion to dismiss is denied.

ENTER:

A handwritten signature in cursive script, reading "Suzanne B. Conlon", written over a horizontal line.

Suzanne B. Conlon  
United States District Judge

December 4, 2000